

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:23-CT-03298-M-RJ

ANDRE EUGENE LESTER,)
)
Plaintiff,)
)
v.) ORDER
)
UNNAMED DEFENDANT,)
)
Defendant.)

On October 19, 2023, Andre Eugene Lester (“plaintiff”), a state inmate, filed *pro se* a complaint under 42 U.S.C. § 1983. [D.E. 1].

On October 20, 2023, the court directed plaintiff to re-file his complaint on the forms prescribed for use by the court, and to either pay the filing fee or apply to proceed without prepayment of fees; and warned him that failure to correct these deficiencies within 21 days may result in dismissal of the action without prejudice for failure to prosecute. Order [D.E. 3].

On October 30, 2023, plaintiff filed a letter noting that he sought relief from the court but stating he does not “fully understand the further actions thereof [sic].” See [D.E. 4].

On November 27, 2023, plaintiff filed what the court construes as a notice of voluntary dismissal. See Mot. [D.E. 5] (asking the court to grant him a voluntary dismissal).

A party may dismiss an action voluntarily, without a court order, by filing a notice of dismissal any time before the adverse party serves an answer or a motion for summary judgment. See Fed. R. Civ. P. 41(a)(1)(A)(i). “A voluntary dismissal under [Fed. R. Civ. P. 41(a)(1)(A)(i)] is available as a matter of unconditional right and is self-executing, i.e., it is effective at the moment

the notice is filed with the clerk and no judicial approval is required.” In re Matthews, 395 F.3d 477, 480 (4th Cir. 2005) (quotation omitted). Unless otherwise stated, the dismissal is without prejudice. See id.; Fed. R. Civ. P. 41(a)(1)(B).

Because no defendant has filed an answer or moved for summary judgment, plaintiff’s November 27, 2023, notice of voluntary dismissal has dismissed the action.

Accordingly, the court: GRANTS plaintiff’s motion for voluntary dismissal [D.E. 5]; DISMISSES WITHOUT PREJUDICE the action; and DIRECTS the clerk to close the case.

SO ORDERED this 28th day of November, 2023.



RICHARD E. MYERS II
Chief United States District Judge